

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: DIGITEK® PRODUCT LIABILITY
LITIGATION

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants respectfully move this Court to enter an Order granting summary judgment on all remaining claims pending before MDL 1968, *In re: Digitek® Product Liability Litigation*. Discovery has closed and it is now clear, based on the existing record and the exhibits that have been filed with this Court as attachments to Defendants' General Background Statement (Doc. 522) that Plaintiffs have no admissible evidence establishing an essential element of all of their products liability claims—that Digitek® received by the plaintiffs in this litigation was defective. For this reason, summary judgment is appropriate because Defendants are “entitled to judgment as a matter of law.” *See* Fed. R. Civ. P. 56(a).

Defendants' Motion for Summary Judgment is the first of five motions filed today in this Court. The other motions are: (2) Defendants' Motion to Exclude Plaintiffs' General Liability Experts; (3) Defendants' Motion for Summary Judgment in the *McCornack* case; (4) Defendants' Motion for Summary Judgment in the *Vega* case; and (5) Defendants' Motion in Limine to Exclude Unreliable Hearsay (applying to all MDL cases). If this Court grants this Motion, which applies to all remaining cases in MDL 1968, it need not resolve any of the other four motions. On the other hand, if this Court denies the Motion, it will still need to resolve Defendants' Motion to Exclude, both case-specific Motions for Summary Judgment, and Defendants' Motion in Limine.

Defendants are also filing a separate Memorandum of Law in support of their Motion for Summary Judgment.

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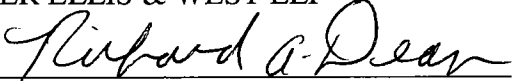
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2011, a copy of the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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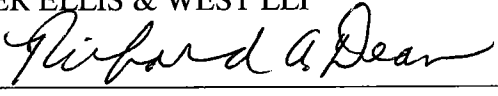
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